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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 08-13555 (JMP)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

February 22, 2012
10:02 AM

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

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MOTION Pursuant to Section 8.4 of the Modified Third Amended
Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its
Affiliated Debtors and Sections 105(a), 502(c) and 1142(b) of
the Bankruptcy Code to Estimate the Amount of Claims filed by
Indenture Trustee on Behalf of Issuers of Residential Mortgage-
Backed Securities for Purposes of Establishing Reserves [ECF
No. 24254]

MOTION of Lehman Brothers Holdings Inc. for Authority to Use
Non-Cash Assets in Lieu of Available Cash as Reserves for
Disputed Claims Pursuant to Section 8.4 of the Debtors'
Confirmed Chapter 11 Plan [ECF No. 24726]

DEBTORS' Two Hundred Twenty-First Omnibus Objection to Claims
(Duplicative of Indenture Trustee Claims) [ECF No. 20860]

MOTION of Jeremy R. Kramer for Reconsideration of the
Reclassifications of His Compensation Claim as an Equity
Interest [ECF No. 25307]

MOTION of Caisse Des Depots Et Consignations to Permit a Late-
Filed Claim Against Lehman Brothers Special Financing Inc. [ECF
No. 18039]

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SYMPHONY ASSET MANAGEMENT LLC's Motions to Deem Proof of Claim
Timely Filed {ECF Nos. 12074, 12075, 12076 and 12078} (This
matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Twenty-Eighth Omnibus Objection to Claims (Valued
Derivative Claims) [ECF No. 9983] (This matter has been
adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Thirty-Fourth Omnibus Objection to Claims
(Misclassified Claims) [ECF No, 10286] (This matter has been
adjourned to April 26, 2012 at 10:00 a.m.)

DEBTORS' Thirty-Fifth Omnibus Objection to Claims (Valued
Derivative Claims) [ECF No. 11260] (This matter has been
adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Fortieth Omnibus Objection to Claims (Late-Filed
Claims) [ECF No. 11305] (The hearing on the claims listed on
Exhibit 1 has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Forty-First Omnibus Objection to Claims (Late-Filed
Claims) [ECF No. 11306] (The hearing on the claims listed on
Exhibit 2 is adjourned to March 22, 2012 at 10:00 a.m.)

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DEBTORS' Forty-Second Omnibus Objection to Claims (Late-Filed
Lehman Programs Securities Claims) [ECF No. 11307] (The hearing
on the claims listed on Exhibit 3 is adjourned to March 22,
2012 at 10:00 a.m.)

DEBTORS' Forty-Third Omnibus Objection to Claims (Late-Filed
Lehman Programs Securities Claims) [ECF No. 11308] (The hearing
on the claims listed on Exhibit 4 has been adjourned to March
22, 2012 at 10:00 a.m.)

DEBTORS' Sixty-Third Omnibus Objection to Claims (Valued
Derivative Claims) [ECF No. 11978] (This matter has been
adjourned to March 22, 2012 at 10:00 a.m.)

MOTION of John Dmuchowski to Permit Filing of Claims as of
September 23, 2009 [ECF No. 12006] (This matter has been
adjourned to March 22, 2012 at 10:00 a.m.)

CATHAY UNITED BANK'S Response in Opposition to Debtors'
Fortieth Omnibus Objection to Claims (Late-Filed Claims) as to
Claim No. 35181 and Motion to Have Claim No. 35181 Deemed
Timely Filed [ECF No. 12037] (This matter is adjourned.)

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MOTION of Pearl Assurance Limited to Deem Proofs of Claim to Be
Timely Filed [ECF No. 12072] (This matter is adjourned.)

DEBTORS' Seventy-First Omnibus Objection to Claims (Valued
Derivative Claims) [ECF No. 13230] (This matter has been
adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Eighty-Fourth Omnibus Objection to Claims (Valued
Derivative Claims) [ECF No. 13955] (This matter has been
adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Eighty-Sixth Omnibus Objection to Claims (No Liability
Claims) [ECF No. 14440] (The hearing on the claims listed on
Exhibit 5 is adjourned to May 31, 2012 at 10:00 a.m.)

DEBTORS' Eighty-Seventh Omnibus Objection to Claims (No
Liability Claims) [ECF No. 14442] (The hearing on the claims
listed on Exhibit 6 is adjourned to May 31, 2012 at 10:00 a.m.)

DEBTORS' Eighty-Eighth Omnibus Objection to Claims (No
Liability Claims) [ECF No. 14450] (The hearing on the claims
listed on Exhibit 7 is adjourned to May 31, 2012 at 10:00 a.m.)

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DEBTORS' Eighty-Ninth Omnibus Objection to Claims (No Liability
Claims) [ECF No. 14452] (The hearing on the claims listed on
Exhibit 8 is adjourned to May 31, 2012 at 10:00 a.m.)

DEBTORS' Ninetieth Omnibus Objection to Claims (No Liability
Claims) [ECF No. 14453] (The hearing on the claims listed on
Exhibit 9 is adjourned to May 31, 2012 at 10:00 a.m.)

DEBTORS' Ninety-Second Omnibus Objection to Claims (No Blocking
Number LPS Claims) [ECF No. 14472] (The hearing on the
Objection as to claims listed on Exhibit 10 is adjourned to
March 22, 2012 at 10:00 a.m.)

DEBTORS' Ninety-Fifth Omnibus Objection to Claims (Valued
Derivative Claims) [ECF No. 14490] (This matter has been
adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Ninety-Sixth Omnibus Objection to Claims (Duplicative
LPS Claims) [ECF No. 14491] (This matter has been adjourned to
March 22, 2012 at 10:00 a.m. as to the claim on Exhibit 11
attached hereto.)

DEBTORS' Ninety-Seventh Omnibus Objection to Claims

(Insufficient Documentation) [ECF No. 14492] (The hearing on the objection to the claims identified on Exhibit 12 has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Third Omnibus Objection to Claims (Valued Derivative Claims) [ECF No. 15003] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Tenth Omnibus Objection to Claims (Pension Claims) [ECF No. 15010] (The Debtors have withdrawn without prejudice their objections as to claim number 5343 Of Edward Lill and claim number 9581 of Richard Locke [ECF No. 25328]. The hearing on the objection to the claims identified on Exhibit 13 has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Eleventh Omnibus Objection to Claims (No Liability Claims) [ECF No. 14491] (This matter is not going forward. The hearing on the objection to the claims identified on Exhibit 14 has been adjourned to March 22, 2012 at 10:00 a.m.)

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DEBTORS' One Hundred Twelfth Omnibus Objection to Claims
(Invalid Blocking Number LPS Claims) [ECF No. 15014] (This
matter has been adjourned to March 22, 2012 at 10:00 a.m. as to
the claims on Exhibit 15 attached hereto.)

DEBTORS' One Hundred Seventeenth Omnibus Objection to Claims
(No Liability Non-Debtor Employee Claims) [ECF No. 15363] (This
matter has been adjourned to March 22, 2012 at 10:00 a.m. as to
the claims on Exhibit 16 attached hereto.)

DEBTORS' One Hundred Twentieth Omnibus Objection to Claims (No
Blocking Number LPS Claims) [ECF No. 16074] (The hearing on the
Objection as to the Unresolved Response is adjourned to March
22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Twenty-First Omnibus Objection to Claims
(To Reclassify Proofs of Claim as an Equity Interest) [ECF No.
16075] (The hearing on the objection to the claims identified
on Exhibit 17 has been adjourned to March 22, 2012 at 10:00
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DEBTORS' One Hundred Twenty-Second Omnibus Objection to Claims
(No Liability Claims) [ECF No. 16046] (The hearing on the
claims listed on Exhibit 18 is adjourned to April 26, 2012 at
10:00 a.m.)

DEBTORS' One Hundred Twenty-Fifth Omnibus Objection to Claims
(Insufficient Documentation) [ECF No. 16079] (This matter has
been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Twenty-Ninth Omnibus Objection to Claims
(No Liability Derivatives Claims) [ECF No. 16114] (This matter
has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Thirty-Second Omnibus Objection to Claims
(Valued Derivatives Claims) [ECF No. 16117] (This matter has
been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Thirty-Sixth Omnibus Objection to Claims
(Misclassified Claims) [ECF No. 16867] (The hearing on the
objection to the claims identified on Exhibit 19 has been
adjourned to March 22, 2012 at 10:00 a.m.)

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DEBTORS' One Hundred Thirty-Eighth Omnibus Objection to Claims
(No Liability Derivatives Claims) [ECF No. 16865] (This matter
has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Fortieth Omnibus Objection to Claims
(Duplicative of Indenture Trustee Claims) [ECF No. 16853] (The
hearing on the claims of Banque Safdie (Claim No. 33557) and
Glitnir Banki hf (Claim No. 27419) is adjourned to March 22,
2012 at 10:00 a.m.)

DEBTORS' One Hundred Forty-Third Omnibus Objection to Claims
(Late-Filed Claims) [ECF No. 16856] (The hearing on the
Objection to the claims listed on Exhibit 20 is adjourned to
March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Fifty-First Omnibus Objection to Claims
(No Liability Claims) [ECF No. 17478] (The hearing on the
claims listed on Exhibit 21 is adjourned to April 26, 2012 at
10:00 a.m.)

DEBTORS' One Hundred Fifty-Fifth Omnibus Objection to Claims
(Valued Derivatives Claims) [ECF No. 17468] (This matter has
been adjourned to March 22, 2012 at 10:00 a.m.)

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DEBTORS' One Hundred Fifty-Sixth Omnibus Objection to Claims
(No Liability Derivatives Claims) [ECF No. 17469] (This matter
has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Objection to Proofs of Claim Filed by 2138747 Ontario
Ltd. and 6785778 Canada Inc. (Claim Nos. 33583 and 33586) [ECF
No. 18397] (The hearing on the Objection has been adjourned to
March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Fifty-Eighth Omnibus Objection to Claims
(Late-Filed Claims) [ECF No. 18399] (The hearing on the
Objection as to the claims of Deborah Focht (Claim Nos. 34381,
42915, 42916) has been adjourned to March 22, 2012 at 10:00
a.m.)

DEBTORS' One Hundred Fifty-Ninth Omnibus Objection to Claims
(Invalid Blocking Number LPS Claims) [ECF No. 18407] (The
hearing on the Objection as to the claim of Corner Banca SA
(Claim No. 45218) has been adjourned to March 22, 2012 at 10:00
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DEBTORS' One Hundred Sixtieth Omnibus Objection to Claims
(Settled Derivatives Claims) [ECF No. 18444] (The hearing on
the Objection as to the claims of HBK Master Fund L.P. (Claim
Nos. 19275 and 19276) has been adjourned to March 22, 2012 at
10:00 a.m.)

DEBTORS' One Hundred Sixty-Second Omnibus Objection to Claims
(Valued Derivatives Claims) [ECF No. 18405] (This matter has
been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Sixty-Third Omnibus Objection to Claims
(No Liability Derivatives Claims) [ECF No. 18409] (This matter
has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Seventy-Third Omnibus Objection to Claims
(No Liability Employee Claims) [ECF No. 19399] (The hearing on
the objection to claims identified on Exhibit 22 has been
adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Seventy-Fourth Omnibus Objection to Claims
(To Reclassify Proofs of Claim as Equity Interests) [ECF No.
19390] (The hearing on the objection to the claims identified
on Exhibit 23 has been adjourned to March 22, 2012 at 10:00
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DEBTORS' One Hundred Seventy-Fifth Omnibus Objection to Claims
(No Liability Pension Claims) [ECF No. 19391] (The hearing on
the objection to the claims identified on Exhibit 24 has been
adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Seventy-Seventh Omnibus Objection to
Claims (No Liability Non-Debtor Employee Claims) [ECF No.
19393] (The hearing on the objection to the claims identified
on Exhibit 25 has been adjourned to March 22, 2012 at 10:00
a.m.)

DEBTORS' One Hundred Seventy-Eighth Omnibus Objection to Claims
(Misclassified Claims) [ECF No. 19377] (The hearing on the
objection to the claims identified on Exhibit 26 has been
adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Seventy-Ninth Omnibus Objection to Claims
(No Liability Derivatives Claims) [ECF No. 19378] (This matter
has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Eighty-Second Omnibus Objection to Claims
(Valued Derivatives Claims) [ECF No. 19398] (This matter has
been adjourned to March 22, 2012 at 10:00 a.m.)

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DEBTORS' One Hundred Eighty-Third Omnibus Objection to Claims
(No Liability CMBS Claims) [ECF No. 19407] (This matter has
been adjourned to June 28, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Eighty-Fifth Omnibus Objection to Claims
(Compound Claims) [ECF No. 19714] (The Debtors have withdrawn
without prejudice their objections as to claim number 94952
(Anthony Nahum) [ECF No. 25244]. The hearing on the objection
to the claims identified on Exhibit 27 has been adjourned to
March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred and Eighty-Sixth Omnibus Objection to
Claims (Misclassified Claims) [ECF No. 19816] (The hearing on
the objection has been adjourned to June 28, 2012 at 10:00
a.m.)

DEBTORS' One Hundred and Eighty-Seventh Omnibus Objection to
Claims (Misclassified Claims) [ECF No. 19817] (The hearing on
the objection has been adjourned to June 28, 2012 at 10:00
a.m.)

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DEBTORS' One Hundred and Eighty-Eighth Omnibus Objection to
Claims (Duplicative LPS Claims) [Docket No. 19871] (This matter
has been adjourned to March 22, 2012 at 10:00 a.m. as to the
claims on Exhibit 28 attached hereto.)

DEBTORS' One Hundred and Eighty-Ninth Omnibus Objection to
Claims (No Liability Repo Claims) [ECF No. 19870] (The hearing
on the Unresolved Responses has been adjourned to March 22,
2012 at 10:00 a.m.)

DEBTORS' One Hundred Ninetieth Omnibus Objection to Claims (No
Liability Security Claims) [ECF No. 19873] (The hearing on the
Unresolved Response has been adjourned to March 22, 2012 at
10:00 a.m.)

DEBTORS' One Hundred and Ninety-First Omnibus Objection to
Claims (Valued Derivatives Claims) [ECF No. 19888] (This matter
has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Ninety-Second Omnibus Objection to Claims
(Partially Settled Guarantee Claims) [ECF No. 19875] (The
hearing on the Objection as to the claim of Red River HYPI,
L.P. and JP Morgan Chase Bank, N.A. (Claim No. 22276) is
adjourned to April 26, 2012 at 10:00 a.m.)

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DEBTORS' One Hundred and Ninety-Eighth Omnibus Objection to
Claims (Late-Filed Claims) [ECF No. 19902] (The hearing on the
Objection as to the Unresolved Responses is adjourned to March
22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred and Ninety-Ninth Omnibus Objection to
Claims (No Liability Claims) [ECF No. 19903] (The hearing on
the Unresolved Responses is adjourned to April 26, 2012 at
10:00 a.m.)

DEBTORS' Two Hundredth Omnibus Objection to Claims (No
Liability Claims) [ECF No. 19921] (The hearing on the
Unresolved Responses and the claim of Paul, Weiss, Rifkind,
Wharton & Garrison, LLP (Claim No. 14176) is adjourned to March
22, 2012 at 10:00 a.m.)

DEBTORS' Objection to Proof of Claim No. 66099 Filed by Syncora
Guarantee, Inc. [ECF No. 20087] (The hearing on the objection
to the claim identified above has been adjourned to March 22,
2012 at 10:00 a.m.)

DEBTORS' Objection to Proof of Claim Number 29702 [ECF No.
20100] (The hearing has been adjourned to March 22, 2012 at
10:00 a.m.)

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DEBTORS' Two Hundred Nineteenth Omnibus Objection to Claims
(Valued Derivatives Claims) [ECF No. 20787] (This matter has
been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Objection to Claim Nos. 22886, 23011, 23024
(Duplicative of Indenture Trustee Claims) [ECF No. 20836] (This
matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Two Hundred Twenty-Fourth Omnibus Objection to Claims
(Late-Filed Claims) [ECF No. 20864] (This matter has been
adjourned to March 22, 2012.)

DEBTORS' Two Hundred Twenty-Eighth Omnibus Objection to Claims
(No Liability Derivatives Claims) [ECF No. 20886] (This matter
has been adjourned to March 22, 2012 at 10 a.m.)

DEBTORS' Two Hundred Thirty-Second Omnibus Objection to Claims
(Valued Derivatives Claims) [ECF No. 21727] (This matter has
been adjourned to March 22, 2012 at 10 a.m.)

DEBTORS' Two Hundred Thirty-Third Omnibus Objection to Claims
(Valued Derivatives Claims) [ECF No. 21727] (This matter has
been adjourned to March 22, 2012 at 10 a.m.)

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DEBTORS' Two Hundred Forty-Seventh Omnibus Objection to Claims
(No Liability Claims) [ECF No. 21727] (The hearing on the
objection to the claims identified on Exhibit 29 has been
adjourned to March 22, 2012 at 10 a.m.)

DEBTORS' Two Hundred Thirty-Eighth Omnibus Objection to Claims
(Late-Filed Claims) [ECF No. 23242] (The hearing on the
Objection as to the Unresolved Response is adjourned to March
22, 2012 at 10 a.m.)

DEBTORS' Two Hundred Forty-First Omnibus Objection to Claims
(No Liability Claims) [ECF No. 23247] (The hearing on the
Objection as to the claims listed on Exhibit 30 has been
adjourned to March 26 (sic), 2012 at 10 a.m.)

DEBTORS' Two Hundred Forty-Sixth Omnibus Objection to Claims
(Valued Derivatives Claims) [ECF No. 23253] (This matter has
been adjourned to March 22, 2012 at 10 a.m.)

DEBTORS' Two Hundred Forty-Fifth Omnibus Objection to Claims
(No Liability Claims) [ECF No. 23251] (This matter has been
adjourned to March 22, 2012 at 10 a.m.)

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DEBTORS' Objection to the Claim of American Investors Life Insurance Co., Inc. (Claim No. 65963) [ECF No. 24110] (The hearing on the Objection has been adjourned to March 22, 2012 at 10 a.m.)

OMNIBUS Application of (I) Individual Members of Official Committee of Unsecured Creditors and (II) Indenture Trustees Pursuant to Section 1129(a)(4), or, Alternatively, Sections 503(b)(3) and 503(b)(4) of the Bankruptcy Code for Payment of Fees and Reimbursement of Expenses [ECF No. 24762] (The hearing on the Objection has been adjourned to March 22, 2102 at 10:00 a.m.)

LEHMAN BROTHERS HOLDINGS INC.'s and Creditors' Committee's Two Hundred Twenty-Ninth Omnibus Objection to JPMorgan's Asset Management Fund Claims (No Liability, Misclassified and Duplicative Claims) [ECF No, 21293] (This matter has been resolved.)

MOTION of Pictet & Cie and Bank Julius Baer & Co. Ltd. to Enlarge the Time Period for the Filing of Claim Number 64249 by One Day [ECF No. 21979} (This matter has been withdrawn.)

Transcribed by: Sara Davis

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et Consignations

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15 BY: FRANKLIN H. TOP III, ESQ.

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20 of Unsecured Creditors

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24 BY: EVAN R. FLECK, ESQ.

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P R O C E E D I N G S

THE COURT: Be seated. Good morning.

MR. BERNSTEIN: Good morning, Your Honor. Mark Bernstein from Weil, Gotshal, Manges on behalf of Lehman Brothers Holdings Inc. and its affiliated Chapter 11 debtors.

We have two reserved motion on the agenda this morning and then three contested claims matters. The first reserved motion is the motion of the debtors to estimate the amount of claims filed by indenture trustees related to residential mortgage-backed securities. As Mr. Perez reported at the prior hearing, the debtors and the indenture trustees have met and have discussed and have agreed on a reserve for these particular claims of five billion dollars, in the aggregate, for the claims of U.S. Bank, Wilmington Trust, Deutsche Bank and Wells Fargo.

Separately, the debtors have agreed on reserves for Bank of America and HSBC. And those are not included in this order; the five billion just really for those first four trustees.

Yesterday, the debtors filed a revised form of order which indicates the five-billion dollar reserve number and allocates it ninety-five percent for the claims against LBHI and five percent for the claims against SASCo. In addition, the debtors have agreed with the indenture trustees to seek to mediate the amounts -- the allowed amounts of the claims to

1 finally resolve the matter altogether. And that -- there's a
2 paragraph in the order directing the parties to mediate at --
3 with a mediator, either selected by the parties if they can
4 agree or selected by the Court.

5 I'm happy to answer any questions Your Honor might
6 have on this. Otherwise, this is going forward on an
7 uncontested basis and we respectfully request Your Honor grant
8 the motion estimating the reserve at five billion.

9 THE COURT: The motion's granted.

10 MR. BERNSTEIN: Thank you, Your Honor.

11 The next item on the agenda will be handled by my
12 colleague, Mr. Fail.

13 MR. FAIL: Good morning, Your Honor. Garrett Fail;
14 Weil, Gotshal for the debtors.

15 The next motion is the motion of Lehman Brothers
16 Holdings Inc. for authority to use non-cash assets in lieu of
17 available cash as reserved for disputed claims. Of the
18 approximately 11,900 holders of disputed claims that were
19 served with the motion, only five filed responses. I'm happy
20 to report, Your Honor, that four of the five objections have
21 been resolved. The debtors have been informed that Mr. Coreth,
22 Golden State Tobacco Securitization Corporation, Commerce Bank
23 and U.S. Bank are no longer prosecuting their objections.

24 The debtors were not able to reach a resolution of the
25 fifth objection which was filed by Mr. Jamie Murcia who holds a

1 1.4 million dollar disputed claim. LBHI has agreed to adjourn
2 the hearing with respect to Murcia's -- Mr. Murcia's claim only
3 to the March omnibus hearing. The debtors are hopeful that
4 they will be able to reach a resolution of this objection prior
5 to that date to obviate the need for a contested hearing. As a
6 result, the motion is going forward uncontested this morning.

7 The approach of this motion was expressly contemplated
8 by Section 8.4 of the Chapter 11 plan confirmed in December.

9 THE COURT: Let me break in and ask you a question
10 that may be obvious to everybody, but it's not obvious to me.
11 How does it work for Mr. Murcia's opposition to be reserved to
12 another hearing when I'm being asked to approve a procedure
13 that applies across the board? Is it the position that this is
14 specific to Mr. Murcia and that, at least in respect of his
15 claim as a disputed claim, that his claim, pending resolution,
16 will still be treated as reserved by cash assets?

17 MR. FAIL: The debtors will reserve 100 percent of the
18 pro rata share of distributions in cash for Mr. Murcia's 1.4
19 mill -- approximate 1.4 million-dollar claim, pending another
20 agreement on a reserve, disallowance of the claim or order of
21 the Court with respect to an ability to substitute non-cash
22 assets for that claim.

23 THE COURT: So the curiosity, it seems, is that
24 because he has a relatively small claim, he ends up, by virtue
25 of not resolving his objection, with cash reserves while

1 everybody else in the case gets non-cash reserves. That seems
2 bi -- that seems strange to me.

3 MR. FAIL: A higher percentage of cash reserves.
4 There will be a twenty-five percent -- a minimum of twenty-five
5 percent reserved on an aggregate basis for all of the claimants
6 and that aggregate is pooled. And it's higher at different
7 subsidiary debtors that -- as set forth in the Cohn
8 declaration, Your Honor. So that money is pooled.

9 So to the extent that other claims that are currently
10 disputed become subsequently allowed after the first
11 distribution date and before the second, cash will be available
12 for those claimants as it would for Mr. Murcia. In the
13 interim, though, to avoid a contested fight over what is in
14 this case a relatively small claim, in the unique circumstances
15 of these cases, we thought it best to proceed on a consensual
16 basis.

17 THE COURT: Okay. I mean, I was perfectly prepared to
18 deal with everything on a contested basis today. So we can
19 deal with it in a month.

20 MR. FAIL: Okay. Thank you, Your Honor.

21 The debtors believe that using a partial non-cash
22 reserve for disputed claims is a preferred means to accelerate
23 distributions to the thousands of holders of allowed claims.
24 If the motion is approved, the six participating debtors
25 estimate that they will be able to distribute approximately 2.8

1 billion dollars more than they would otherwise to holders of
2 allowed claims in the initial distribution alone.

3 As described in the motion, the relief requested also
4 benefits holders of currently disputed claims that subsequently
5 become allowed because they will benefit -- because they will
6 be entitled to receive a catch-up distribution at the higher
7 percentage paid on the initial distribution. The procedures
8 established provide adequate, reasonable protection for the
9 holders of disputed claims. In order to substitute non-cash
10 assets, two conditions must be satisfied on a distribution
11 date: The applicable debtor must reserve at least twenty-five
12 percent of the required reserve amount in cash so there will be
13 a minimum cash reserve; and the value of the participating
14 debtor's non-cash assets must be at least 2.5 times that amount
15 of the debtor's required reserve not covered by the minimum
16 cash reserve.

17 Non-cash assets will be used first to pay catch-up
18 distributions to holders of disputed claims that become
19 allowed. And then, to replenish the fund -- replenish and fund
20 the minimum cash reserve before further distributions are made
21 to holders of previously allowed claims. The motion does not
22 apply to administrative, priority or secured claims. All
23 disputed claim holders will be entitled to receive the interest
24 earned on their reserve amount as if the entire amount has been
25 reserved in cash. So there is no change with respect to the

1 interest provision in the plan.

2 Additionally, the plan administrator will evaluate
3 the -- each debtor's assets and claims prior to each
4 distribution date and the plan administrator may establish
5 additional minimum conditions prior to substituting non-cash
6 assets as reserves. The relief requested is supported by the
7 Cohn declaration. Mr. Cohn is a managing director with Alvarez
8 & Marsal and a senior vice-president and co-treasurer of Lehman
9 Brothers Holdings Inc.

10 The declaration illustrates the mechanics of the
11 motion, assuming values as of January 27th, 2012, and it
12 provides further support for the protections that are
13 established by the motions for disputed claim holders. For
14 instance, in the illustrative example set forth on Exhibit D,
15 the asset-to-reserve ratio for LBHI is in excess of 20:1. And
16 for LCPI, it's 190:1.

17 The other participating debtors will retain a minimum
18 asset-to-reserve ratio of 2.5:1 but a minimum cash reserve
19 significantly greater than twenty-five percent; fifty percent
20 for LBSF, seventy percent for LOTC and ninety percent for LBCS.
21 Mr. Cohen is present in the courtroom today and I would move
22 for the admission of his declaration into evidence.

23 THE COURT: Is there any objection to that?

24 I hear no objection. It's admitted.

25 (Steven Cohn's declaration was hereby received into evidence as

1 a Debtors' Exhibit, as of this date.)

2 MR. FAIL: Thank you, Your Honor.

3 The motion is also supported by the creditors'
4 committee which filed a statement in support at Docket 25546.
5 On February 20th, we filed a revised proposed order. The order
6 contained clean-up and technical changes, mainly relating to
7 amounts other than plan adjustment that are reallocated
8 pursuant to settlements incorporated into the plan. The
9 changes make clear that any reallocated amounts for the LCPI
10 settlement amount, the LBSF settlement amount and the LBSF
11 additional settlement amount that would be reserved for
12 disputed claims in the classes that are allowed to receive a
13 share of those plan settlement reallocations will continue to
14 be reserved in cash.

15 In addition, to resolve one of the objections to the
16 motion, LBHI agreed that it would provide notice of its
17 intention to substitute non-cash assets in compliance with the
18 requirements of the motion and the proposed order in advance of
19 any distribution made, subsequent to the initial distribution.
20 Under the unique circumstances of these cases, the debtors
21 respectfully request that the Court grant the relief requested.

22 THE COURT: We're proceeding on an unopposed basis, so
23 this becomes easy to do. But I would like to hear from counsel
24 for the creditors' committee in reference to the statement that
25 was filed, which is have read, because we're dealing with a

1 fairly significant adjustment in the treatment of disputed
2 claims, fully consistent with Section 8.4 of the plan, but with
3 specifics that were not built into the plan. And so, I'm
4 particularly interested in hearing what the creditors'
5 committee has to say about its independent review of this
6 process.

7 MR. FAIL: Thank you, Your Honor.

8 MR. FLECK: Good morning, Your Honor. Evan Fleck of
9 Milbank, Tweed -- shouldn't have done that -- on behalf of the
10 official committee.

11 As Mr. Fail noted, and as Your Honor noted, we do
12 support -- the committee supports the relief requested in the
13 motion and we filed a statement on the docket. When the plan
14 provision was initially contemplated, the committee was
15 supportive of it. At that time, it was really just a concept
16 that maybe at some time in the future, it will make sense to
17 use some of the non-cash assets of the estates and they're
18 significant, to provide for protection and reserve when
19 distributions ultimately -- when we reach that phase of the
20 case. And it wasn't until after the plan discussions really
21 took place in earnest and the confirmation process that we
22 thought, together with the debtors, about potentially invoking
23 that provision and coming up with the mechanism that's the
24 subject of the motion.

25 And as with many other motions, we've come up before

1 the Court and told Your Honor that we took a lot of time and we
2 weren't initially, as a committee, convinced that this was the
3 right way to proceed. And together with the committee's
4 financial advisors, we spent a great deal of time working with
5 A&M to crunch the numbers and make sure that not only were the
6 and are the allowed claimants protected by the relief requested
7 in the motion, but also those parties who had disputed claims
8 because the committee recognizes that those parties, some of
9 them will ultimately have allowed claims; they are part of the
10 creditors' committee's constituency and the committee owes
11 fiduciary duties to those parties as well.

12 And after taking those analyses into account,
13 ultimately the committee did decide this relief does make sense
14 and protects the interests of all parties. And, as Your Honor
15 noted, it was contemplated by the plan and ultimately with
16 the -- in connection with the motion, parties were given
17 adequate notice of the relief that was requested.

18 The committee, often, through counsel and financial
19 advisors, we received inquiries from parties in interest in the
20 cases and often their views about relief requested. In the
21 case of this motion, there were questions raised by creditors
22 but the overwhelming majority of the inquiries that the
23 committee received and that its advisors received was positive.
24 People wanted to know the mechanism by which the catch-up
25 distributions and subsequent distributions would be made and

1 how'd they be protected, but after they understood the process,
2 there was overwhelming support.

3 The committee -- there are two primary reasons why the
4 committee is supportive of the relief, Your Honor. First, it's
5 because of the substantial benefits that go to allowed --
6 holders of allowed claims. I think that's manifest from the
7 motion; distributions are going to be larger. And as I argued
8 to the Court in connection with the LBF motion a few weeks ago,
9 it's important to the committee that part of the bargain that
10 we think was at issue in this plan settlements that so many
11 creditors in these cases made and the compromises they reached
12 in connection with resolving their claims and not pursuing
13 litigation in these case was that the initial distribution, and
14 all distributions, would be meaningful. And they would be the
15 largest distributions that were appropriate under the plan.
16 And those creditors were aware that this provision was in the
17 plan, believed it was appropriate and in the committee's view,
18 it was their rational expectation that some of the non-cash
19 assets of these estates would be used for reserve purposes so
20 that the initial distribution could be as large as possible and
21 as appropriate under the circumstances, while still taking into
22 account and protecting the interests of the disputed claim
23 holders.

24 In consultation with counsel and its financial
25 advisors, the committee concluded that the risk to the holders

1 of disputed claims in this process is remote. So many things
2 in this case, we've said there's no such thing as a riskless
3 transaction; we think that's true here as well. But the risks
4 that exist here are reasonable and appropriate under the
5 circumstances. It's set forth more fully in the declaration of
6 Steven Cohn in support of the motion, but the committee
7 believes that LBHI has proposed reasonable measures to protect
8 the interest of the disputed claim holders. In the committee's
9 opinion, it will ensure that any potential prejudice to those
10 holders, as I said, is remote.

11 Although LBHI can come back to the Court and propose
12 additional minimum conditions, with respect to the minimum
13 asset-to-reserve ratio, there will -- they would be required to
14 provide due notice to the holders of disputed claims and this
15 Court's approval would be required if LBHI ever seeks to reduce
16 the minimum terms and conditions that are proposed in the
17 motion. That was a very important component of the process for
18 the committee.

19 Additionally, Your Honor, under the priority scheme
20 for subsequent distributions, the available cash that's
21 generated from non-cash assets will be used first to satisfy
22 the catch-up distributions and then to fund the minimum cash
23 reserve for the outstanding disputed claims. And in the
24 committee's view, they're comfortable that that will endure
25 that the holders of disputed claims that subsequently become

1 allowed claims will receive the pro rata share of distributions
2 to which they're entitled. Significantly, the holders of
3 disputed claims will be -- will continue to be entitled to the
4 accrual of interest that would have been earned on the entire
5 amount of the reserves as if they consisted entirely in cash.

6 And more important to the committee's determination
7 that the request is reasonable under the circumstances, the
8 committee's advisors have analyzed all the variables that will
9 impact the sufficiency of available cash to cover the disputed
10 claim that subsequently become allowed and to fund the minimum
11 cash reserve, and have concluded that there is no risk of
12 insufficient available cash to satisfy catch-up distributions.
13 As we've set forth in the committee's statement, the
14 committee's advisors together with the debtors' advisors have
15 analyzed the outstanding disputed claims; the debtors'
16 projections of the amounts in which such claims may be allowed
17 as well as the committee's own projections; the value of the
18 participating debtors' non-cash assets; the estimated cost of
19 the post-effective date administration of the participating
20 debtors' estate; and the near-term cash events that are
21 expected to generate non-cash assets. And based upon those
22 analyses, the committee has concluded that a significant
23 cushion will exist for the protection of holders of disputed
24 claims, thereby making the risks that are attendant to the
25 motion remote and appropriate under the circumstances.

1 And for those reasons, Your Honor, the committee is
2 supportive of the relief requested and asks that the order be
3 entered.

4 THE COURT: I appreciate your comments and they're
5 very helpful. But I, without quibbling, want to ask you about
6 your reference to there being no risk to the inability of the
7 debtor to make catch-up distributions versus what I think was
8 your opening salvo that it's virtually impossible for
9 transactions to made riskless.

10 Is this a remote risk or is there, in the opinion of
11 the committee's professionals, no risk that this set-up will
12 result in a shortfall for any of the disputed creditors in the
13 future?

14 MR. FLECK: Your Honor, we believe that there's a very
15 remote risk. I guess that's option number 3, because, as I
16 said, we think that -- we're very comfortable with the
17 committee's analyses with respect to the value of the non-cash
18 assets. We've tested the debtors' determination and analyses
19 with respect to the valuation of those assets. We think
20 they're good and they can be relied upon, and they've been
21 relied upon throughout these cases.

22 We can't predict every circumstance that comes up
23 along the way, so therefore --

24 THE COURT: Your partner seems anxious to say a few
25 words. And I'm going to let him do that.

1 MR. FLECK: Okay.

2 UNIDENTIFIED SPEAKER: Your Honor, I picked up on how
3 you precisely phrased this in terms of whether there's a remote
4 risk or no risk with respect to a potential shortfall or the
5 inability to make distributions to creditors in the future.
6 And I'm going to answer it two ways.

7 We believe there is no risk that a creditor will bear
8 a permanent risk of non-payment as a result of this. There is
9 a remote risk that -- and we believe it's a very small risk --
10 that a subsequent distribution date -- there may be
11 insufficient cash assets to true up everybody whose claims have
12 been allowed in the interim, and therefore they would have to
13 wait to the next one when those non-cash assets were
14 liquidated. But we believe that is extremely remote. We ran
15 numerous hypotheticals on that and in the, you know, ninety-
16 five-plus percent of cases, there wasn't even the delay of
17 payment.

18 THE COURT: Okay. Appreciate that.

19 UNIDENTIFIED SPEAKER: Thanks.

20 THE COURT: I also recognize that my question was
21 deliberately designed to get at what risks we're talking about.
22 And I'm satisfied that the difficult question has been
23 answered -- by both of you.

24 I do have a question, though, for Mr. Fail, and
25 perhaps also for Mr. Cohn. And it has to do with the

1 resolution of all objections with the exception of Mr. -- or
2 maybe it's Ms. Murcia's objection which continues. I'd like to
3 know more about the process that led these various objectors
4 to, in effect, give up and whether or not any concessions were
5 made to them in order to get them to withdraw their objections
6 at this point.

7 MR. FAIL: Your Honor, Garrett Fail, again.

8 With respect to U.S. Bank and to the extent that any
9 of the parties are present or on the telephone and wish to add,
10 supplement or correct, you know, they should feel free -- with
11 respect to U.S. Bank, our conversations were productive
12 immediately following the filing of the Cohn declaration which
13 was filed after the objection deadline. So, after parties, I
14 think, after all of the parties had a chance to review the Cohn
15 declaration and we had a chance to explain it and discuss it
16 with them and the committee's statement in support was filed,
17 circulated to them and discussed, I think that's one area that
18 went a very long -- two things that went a long way to resolve
19 the objections.

20 With respect to U.S. Bank, Your Honor, I don't know if
21 I names them originally, but that was -- to resolve that
22 objection, we agreed to -- the debtors agreed to provide
23 advance notice of subsequent applications of the relief
24 required in the motion. That is the only thing. In connection
25 with none of these resolutions were any claim settlements

1 reached; no claims allowed; no compromise on the debtors' or
2 any parties in interest's ability to object to these claims
3 which are -- may be disputed.

4 With respect to the remaining three claims, if my math
5 is correct, the debtors entered into reserve stipulations which
6 provided for a minimum cash reserve percentage higher than
7 twenty-five percent, but a floor that would be maintained for
8 each of the claims. Which, again, in the context of these
9 cases, were each relatively small and in the aggregate,
10 compared to the amount of and the number of and the size of the
11 aggregate pool of disputed claims and the cash that would be
12 required to be reserved, are relatively minimal; it wouldn't
13 have an effect on the -- significant effect on the distribution
14 to creditors.

15 THE COURT: Okay. Is there anyone else who wishes to
16 say anything in reference to this inquiry?

17 MR. TOP: Your Honor, Frank Top on behalf of U.S.
18 Bank. We did withdraw our objection based upon the statements
19 that the debtors are going to be providing, particularly as
20 part of future distributions. We were not as concerned about
21 this upcoming distribution, particularly since we're primarily
22 an LBHI creditor and the ratios currently are so large. But we
23 are, of course, you know, concerned about future distributions
24 and we felt that the -- at least the statement that, you know,
25 the debtors -- that someone's actually looking at these ratios

1 and that these ratios are being complied with in connection
2 with future distributions will be helpful, not only to U.S.
3 Bank, but to all creditors of the estates, so that they can
4 take a look at that and review that in advance of a
5 distribution and take whatever action they view as appropriate
6 at that particular point in time.

7 We also took some comfort with the fact that the plan
8 administrator doesn't have to use these particular ratios; it
9 could be more conservative if the plan administrator so
10 chooses. And so we would hope that, you know, to the extent
11 that market conditions got to the point where, lo and behold,
12 there might be another Lehman event or something like that
13 that's so drastic that the plan administrator would use his
14 discretion appropriately, that -- be a little bit more
15 conservative if that -- those types of events ever occurred.

16 So, no, we don't think that there's no risk, but we
17 think so long as people are provided with information in
18 advance of future distributions to allow them to protect
19 themselves, to a certain extent, and that the plan
20 administrator uses his discretion appropriately, that we got
21 comfortable enough with the motion to withdraw our objection.

22 Thanks.

23 THE COURT: Okay. I have a question for Mr. Cohn, if
24 he's present. It's a very, very -- Mr. Cohn, you can hear the
25 question and then you can stand up and answer. There's no need

1 to be sworn at this point.

2 It's really -- I guess it's my own inability to fully
3 appreciate the financial models that are embedded in the
4 conclusions set forth in your declaration and in the proposal.
5 I'd like to know a little bit more about how the ratio of 2.5:1
6 was developed.

7 I assume that there was a sensitivity analysis of some
8 sort done and that different ratios may have been tested as
9 part of the process in coming up with the 2.5. But, obviously,
10 the 2.5 bears no relationship to the 190:1 ratio that appears
11 at LBHI. And in part because this structure is so complicated,
12 at least from my perspective, and must have evolved over time
13 with a balancing between maximizing present distributions to
14 allowed claimants and protecting the interests of future
15 claimants that are subject to dispute, I'm just interested in
16 knowing how this process went and how you ended up in the place
17 that has been proposed.

18 MR. COHN: Sure. We actually --

19 THE COURT: You can come to the microphone.

20 MR. COHN: My name is Steven Cohn.

21 We actually looked at a couple of different options.
22 We looked at roughly 2-and-a-half to 1 and 3:1 and the concept
23 that we used in determining that or looking at this was almost
24 an asset-based lending concept. In other words, if we -- if
25 the estate were to go out and borrow money based on the assets,

1 what kind of advance rate would a bank provide to us in terms
2 of the asset? Similar to an asset-based loan that uses
3 accounts receivable or inventory as security, you might get
4 eighty percent of the accounts receivable or you might get
5 sixty percent of inventory. These being a combination of
6 assets that are liquid that actually throw off cash, as in
7 loans, whether they be real estate loans or commercial loans,
8 and assets that don't throw off money such as private equity
9 investments or, you know, other things that we need to wait for
10 to monetize. So, a combination of things and we thought we
11 needed to be a little bit more conservative than what a bank
12 would actually do on liquid inventory and receivables because
13 that's an on-going business. So we wanted something somewhat
14 more conservative than that.

15 We looked at two and a half; we looked at three. We
16 thought that two and a half was a reasonable floor in terms of
17 protection. As you've noticed from the exhibit, it only
18 applies to the three smaller entities at this point in time.
19 And we would expect that, over time as their assets decline,
20 their actual reserves of cash will increase. I think at the
21 moment, it's about fifty percent for LBSF. We would think,
22 actually, by the time of the distribution, it'll actually be a
23 higher percentage cash reserve because their assets continue to
24 come down as cash is collected. So the two-and-a-half-times
25 number which will be the trigger will actually generate a much

1 higher -- not much, but maybe ten-point higher cash reserve at
2 this point, but the time we get to a distribution.

3 So that was really the thought process. We thought
4 twenty-five percent on the other side, as a cash reserve, was
5 really kind of the absolute minimum. In other words, we are
6 conscious of our obligations to disputed claimants as well as
7 allowed claimants and that, really, using something less than
8 twenty-five percent was not prudent. And we reserved the
9 rights, at least as my understanding goes, that if as the
10 assets decline in the estate or we're not happy with the
11 quality of the assets, to say you know what, our minimum
12 threshold will be thirty-five percent on the second or third or
13 fourth distribution in order to make sure that there is
14 sufficient assets available to pay the disputed claimants as
15 they become allowed.

16 THE COURT: And I take it that in this process, you
17 had some interaction with the professionals for the committee
18 and shared your work product or at least thinking with them and
19 that they tested it as well?

20 MR. COHN: Yes. We spent a considerable amount of
21 time with FTI who are the financial advisors on this piece of
22 the business with -- of the committee. They took us through
23 their analysis; they asked us to do a little bit more. We had
24 done some work -- the only thing that's not included were our
25 estimates of cash flow on a go-forward basis, which is really

1 what the committee's advisors wanted to understand. In other
2 words, how much cash would be generated between now and the
3 next distribution date and they made their own estimates and we
4 shared with them whether we thought they were in the ballpark
5 or not. They were using conservative numbers and they were --
6 and they actually shared with us a preliminary form of the
7 exhibits that they shared with the committee. So, yes, we had
8 the opportunity both to work with them and to give them some
9 constructive criticism as to how their presentation should go.

10 THE COURT: Okay. Thank you very much for that.

11 Anything more?

12 MR. FAIL: No, Your Honor.

13 THE COURT: Okay. This is approved. I'm satisfied
14 based upon the materials that I've reviewed and the statements
15 that have been made on the record, including the comments of
16 counsel, both counsel for the committee who happen to be
17 present today and Mr. Cohn's statements in response to my
18 questions, that the structure that's been set up here provides
19 what I'll term adequate protection for the disputed claims.
20 And I believe that the process that has been described
21 represents a creative and appropriate balancing of the needs of
22 creditors whose claims have been allowed with those creditors
23 that have claims that are subject to dispute.

24 Candidly, I'm surprised that there is a remaining
25 objection that is being carried and, to the extent that this is

1 being heard as a separate matter in March, I'm frankly loathe
2 to disparately protect one creditor that happens to be
3 unwilling to make concessions in the objections that had been
4 lodged. Notwithstanding the very persuasive evidence that has
5 been presented concerning adequate protection, such opposition
6 should not result in more favorable treatment.

7 I'm in effect telegraphing what I would do with that
8 objection if it were being heard today. To the extent the
9 parties wish to be guided by that, that may be helpful.

10 It's approved and I'll enter the order.

11 MR. FAIL: Thank you very much, Your Honor. I'll turn
12 the podium over to my colleagues who will continue with the
13 rest of the claims agenda.

14 THE COURT: Okay.

15 MR. KLEINSASSER: Your Honor, Matthias Kleinsasser
16 with Weil, Gotshal for the debtors. I'm going to handling
17 agenda item 3.

18 Your Honor, this item concerns the 221st omnibus
19 objection. That objection seeks to expunge claims of
20 individual noteholders, each of which is covered by a proof of
21 claim filed by an indenture trustee.

22 Today, Your Honor, we're moving against claim 67675,
23 which is held by Ms. Annetta Pugia. That claim which, Your
24 Honor, I'm going to call the new claim, is virtually identical
25 to claim 35260 which Ms. Pugia filed on September 28th, 2009.

1 Your Honor, I'm going to refer to the claim 35260 as the
2 original claim.

3 The debtors previously identified the original claim
4 as duplicative of the indenture trustee claim 21805 filed by
5 Bank of New York Mellon and included the original claim on the
6 twenty-seventh omnibus objection. The Court overruled Ms.
7 Pugia's objection to the twenty-seventh omnibus objection and
8 the original claim was expunged pursuant to an order of this
9 Court entered on September 21st, 2010.

10 Ms. Pugia subsequently filed the new claim, Your
11 Honor, on October 3rd, 2011. The new claim is subject to the
12 221st omnibus objection and the new claim is the one we're
13 moving against now. The new claim is essentially the same
14 claim as the original claim, Your Honor, and actually purports
15 to amend the original claim. The asserted amount is almost
16 exactly the same, approximately 23,000 dollars, and it's based
17 on the same security as the original claim.

18 The debtors have identified the new claim as
19 duplicative of indenture trustee claim, 21805, the same
20 indenture trustee claim that covered the original claim.
21 Specifically, Your Honor, the security on which the new claim
22 is based has a QCIP of 52519Y209, which is covered by the
23 indenture trustee claim.

24 Ms. Pugia filed two responses to the 221st omnibus
25 objection; one on October 24th, 2011 at docket number 21560,

1 and an identical response on February 8th, 2012 at docket
2 number 25111. These responses do not address the merits of the
3 221st omnibus objection. The bases of these responses is that
4 Ms. Pugia invested money with the debtors who shortly
5 thereafter were found to be financially unsound.

6 The responses request that the Court overrule the
7 objection because the investment made by Ms. Pugia represent a
8 lot of money to her. Without meaning any disrespect to Ms.
9 Pugia, Your Honor, who I understand to be appearing pro se in
10 this case, the debtors would point out that she has not
11 addressed the merits of the 221st omnibus objection;
12 specifically, that the new claim is duplicative of the
13 indenture trustee claim.

14 Because the security serving as to the basis for the
15 new claim is covered by the indenture trustee claim, we
16 respectfully request that the Court overrule Ms. Pugia's
17 responses and grant the 221st omnibus objection with respect to
18 claim 67675.

19 THE COURT: Is Annetta Pugia in court or is she
20 present by telephone?

21 I hear no response. I've reviewed the claimant's
22 written submission and agree with the characterization of
23 counsel that it does not deal with the merits of the objection
24 under the circumstances. And given the fact that Ms. Pugia is
25 not here to prosecute her response, I'm overruling her

1 objection and granting the omnibus objection to claim with
2 respect to her claim.

3 MR. KLEINSASSER: Thank you, Your Honor. I'm now
4 going to turn the podium over to my colleague, Ms. Eckols.
5 Thank you.

6 MR. FAIL: Your Honor, Garrett Fail again. Just one
7 scheduling note. I think there's -- I know there's an item on
8 the calendar today for a status conference in connection with a
9 motion filed by the members of the creditors' committee for
10 reimbursement. Mr. Gitlin is here, chair of the fee committee,
11 and has a scheduling conflict.

12 So if, at a certain point it pleases the Court, we
13 could adjourn briefly the claims hearing and have the status
14 conference. Alternatively, if that doesn't work for the Court
15 we'll just proceed with the claims agenda.

16 THE COURT: Well, I see Mr. Gitlin in the front row.
17 Ordinarily I don't change the order of business to accommodate
18 the needs of one individual, unless there's an extraordinary
19 need for that individual to be present. And in Mr. Gitlin's
20 case, that's true; he does need to be present for the
21 conference. If I had been advised of this prior to the
22 commencement of today's hearing, we might have taken the status
23 conference first and avoided the interruption of the calendar.

24 When -- not that his personal business should become
25 public knowledge, but when does Mr. Gitlin need to leave the

1 courtroom?

2 MR. GITLIN: Your Honor, if necessary, I could stay.
3 Unfortunately, I have made serious commitments today in another
4 town. If I could leave the courtroom about a quarter to 12 or
5 12, I could still make it.

6 THE COURT: Oh, that won't be a problem.

7 MR. FAIL: Thank you, Your Honor.

8 MS. ECKOLS: Good morning, Your Honor. Erin Eckols
9 for the debtors. I'm going to be handling the last two
10 contested claims items. Agenda item 4 is the motion of Jeremy
11 Kramer for reconsideration of the reclassification as an equity
12 interest.

13 I believe Mr. Kramer's counsel is in the courtroom and
14 making his way up to the podium.

15 THE COURT: Okay.

16 MR. KAPLAN: Good morning, Your Honor. Eugene Kaplan
17 for Jeremy Kramer.

18 This is a motion for reconsideration of Mr. Kramer's
19 claim which was reclassified as an equity interest in default.
20 Mr. Kramer --

21 THE COURT: He voluntarily defaulted. He knowingly
22 didn't take a position. How can you possibly come back now?

23 MR. KAPLAN: Well, I think, first of all the fact
24 that -- even if he voluntarily defaulted, that's not a basis
25 to --

1 THE COURT: Yes, it is.

2 MR. KAPLAN: It's one basis.

3 THE COURT: He's a sophisticated claimant who,
4 according to the papers, knew full well that he had an
5 opportunity to object. Extended the time with the consent of
6 the debtor and chose to take a dive.

7 MR. KAPLAN: He is a sophisticated investment
8 professional. He's not a lawyer. He's not a bankruptcy
9 lawyer.

10 THE COURT: He certainly is in a position to protect
11 his interest. It's a large claim. He worked at Neuberger
12 Berman. He, presumably, knows a lot about what goes on in
13 bankruptcies or is in the position to learn about it.

14 He was in consultation directly with debtors' counsel
15 and made an informed decision, at least informed well enough
16 for his purposes to not take a position. He could have hired
17 counsel, he chose not to.

18 MR. KAPLAN: He could have.

19 THE COURT: He's now hiring counsel too late.

20 MR. KAPLAN: He hired counsel after he had spoken with
21 his --

22 THE COURT: He's hiring counsel after he observed that
23 others similarly situated were able to improve their position
24 by fighting.

25 MR. KAPLAN: But those others were members of the same

1 group with which he is affiliated at Neuberger Berman, with
2 whom he consulted initially and who expressed no interest in
3 joining with him.

4 THE COURT: So what?

5 MR. KAPLAN: And --

6 THE COURT: So what?

7 MR. KAPLAN: He did not --

8 THE COURT: He's an individual. He's in the position
9 to take a fight if he chooses to.

10 MR. KAPLAN: He did not know enough --

11 THE COURT: He chose not to.

12 MR. KAPLAN: He did not know enough to --

13 THE COURT: He could have learned. He could have
14 informed himself, he didn't.

15 MR. KAPLAN: He could have, that's true. But even
16 if -- even that being so does not mean that his default cannot
17 be vacated and put him back into the position of litigating his
18 claim.

19 THE COURT: Well, he has a 60(b) obligation to bear,
20 how does he do that?

21 MR. KAPLAN: Well, he has demonstrated that the claim
22 has merit. He has demonstrated, I think quite clearly, that
23 the debtors are not at all prejudiced by restoring his claim.
24 And I think he has demonstrated, certainly, that he did not act
25 in bad faith. That under 60(b) his -- it certainly wasn't a

1 conscious decision to default, it was a --

2 THE COURT: Oh, yes, it was.

3 MR. KAPLAN: I think it was a lackadaisical sort of
4 choice.

5 THE COURT: But, wait. But, wait. We're not talking
6 about somebody who was unconscious. We're talking about
7 someone who made a knowing decision not to take issue with the
8 omnibus objection that affected his right. He did that
9 knowingly. He may not have done it with the advice of counsel,
10 and, presumably, he didn't retain counsel because he didn't
11 think it was worth spending the money to engage counsel to
12 fight the fight.

13 MR. KAPLAN: No, I don't -- I think he sought out
14 others in the Straus Group to work with him and they, because
15 they had not been named in this objection, for whatever reason
16 the debtor chose not to name them and isolate Mr. Kramer, they
17 decided that there was nothing that they had to deal with at
18 that time. When they then were served with the next or the
19 118th objection, they went out and got counsel and -- over the
20 course of months they got counsel and proceeded to fight the
21 objection. He did not have that opportunity.

22 As you will see, Judith Kenney who was not a member of
23 the Strauss Group but who was at Neuberger, she filed pro se
24 papers and then later joined the group that I represent with
25 respect to the 118th objection and joined in. But putting Mr.

1 Kramer in with his fellows does no more than put him where Ms.
2 Kenny is and the others are, which is giving them a chance to
3 fight for their claims.

4 As I said, the tripartite test by the Second Circuit,
5 under 60(b) is not a win or take all of each element. It's
6 looking at the totality of the circumstances and here, given
7 that there is some merit to the claim that is going forward,
8 given that the debtor is put in no worse a position with
9 respect to Mr. Kramer's claim then with respect to other claims
10 of the same nature, the only question is the excusability (sic)
11 of the default.

12 And while Mr. Kramer may not have been litigious at
13 the time and may not have thought much of the claim enough to
14 go out and retain counsel at that time. He has thought about
15 it subsequently. He has retained counsel. He's put in a
16 position with everybody else. It certainly wasn't this, sort
17 of, conscious, deliberate, willful, nasty, sort of, default
18 that Lehman attempts to characterize it as. He was a pro se
19 who didn't really understand what he was doing and gave up his
20 rights and now thinks better of it. And given where we are in
21 this process, nobody's really hurt by allowing him to come back
22 and argue his claim.

23 THE COURT: On the prejudice point, let me press you a
24 little bit because the history of the claims objection docket
25 in this case is one of people just like your client, Mr.

1 Kramer, who default -- knowingly default -- receive notice of
2 an omnibus claims objection and who say nothing and do nothing,
3 and these matters go forward on an uncontested basis and
4 billions of dollars in claims have been disallowed as a result
5 of that process.

6 If what you say becomes the law of the case, every
7 single person who made the same kind of decision that Mr.
8 Kramer made can come back into court and restart the process.
9 That's prejudice, not only to the debtors but to me.

10 MR. KAPLAN: I think that Mr. Kramer presents a
11 special case.

12 THE COURT: Why?

13 MR. KAPLAN: Because --

14 THE COURT: I think he actually presents a case that's
15 less special. He is a pro se who is sophisticated. He's a pro
16 se that sophisticated people go to for financial advice. He's
17 the kind of person who has access to smart advisors. He could
18 have obtained you earlier and made an economic decision.
19 According to your statements and your pleadings, if he had a
20 group, he would have hired counsel but he didn't want to do it
21 on his own. That's his choice.

22 MR. KAPLAN: Going back to what Your Honor started
23 with, which is the prejudice, I think that the instance of
24 these Neuberger claimants that I represent present, as I said,
25 a special case, because they are far different from the

1 ordinary Lehman employees who voluntarily joined the Lehman pay
2 scheme. So I think that for that reason, the number of
3 claimants who could reopen their claims were this to become law
4 of the case, would be a very finite universe and would not
5 reopen the floodgates as the debtor supposes.

6 THE COURT: I understand your argument, but I
7 disagree. This is not limited to the Straus Group, what used
8 to be Neuberger Berman. This is a process that has been
9 ongoing for a very long time with great success, and I believe
10 that you have a very difficult burden in overcoming the
11 prejudice argument associated with your request for
12 reconsideration. But I'll hear what the debtors have to say --
13 probably not much more than I've already said.

14 MS. ECKOLS: Your Honor, I'm going to keep it
15 incredibly brief. The debtors' position is set forth at length
16 in its response at docket number 25377, and I believe most of
17 the key points have already been discussed here.

18 Mr. Kramer's decision not to oppose the
19 reclassification was deliberate and it was willful for purposes
20 of Rule 60(b), and this is fatal to his request for
21 reinstatement. The key enquiry in the Second Circuit -- it was
22 whether Mr. Kramer made a conscious decision not to respond,
23 and it is clear that his decision was conscious and knowing and
24 intentional. It is not an issue on the Second Circuit. It's
25 not a requirement of bad faith or good faith. That is

1 irrelevant for this. He admits he received notice. He admits
2 he received an adjournment. He admits he consulted with co-
3 workers and attorneys. He admits that he decided not to retain
4 counsel and ultimately not to oppose the seventy-third omnibus
5 objection.

6 As Your Honor noted, he attempts to paint himself as
7 an unsophisticated pro se creditor, when in reality he is a
8 sophisticated investment advisor that is in charge of managing
9 billions of dollars in investments. He could have filed a
10 response on his own. We have dozens, maybe hundreds, of pro se
11 people in these cases who file their own documents. He didn't
12 even need to retain an attorney in order to oppose the seventy-
13 third omni. He made a deliberate decision and he should be
14 held to that decision.

15 Briefly, Mr. Kramer has not met his burden of
16 establishing a meritorious defense in lieu of his asserting his
17 own defense to the seventy-third omni. He attempts to borrow a
18 response filed by certain individuals, allegedly co-workers
19 that are similarly situated to him, in opposing the 118th
20 omnibus objection. To carry his burden to proffer a
21 meritorious defense, Mr. Kramer must offer his own defense, not
22 point to another's. He cannot bootstrap his claim onto the
23 response of other claimants to another objection no more than
24 the debtors could seek to expunge claims that are on one
25 objection pursuant to another.

1 And finally, Your Honor, as to the prejudice point,
2 Mr. Kramer cannot carry his burden on this factor. As Your
3 Honor noted, there are thousands of other claimants whose
4 claims have been disallowed or reclassified because the
5 claimants failed to oppose the debtors' objections. Granting
6 this motion would encourage others to seek relief whose
7 circumstances are no more sympathetic than Mr. Kramer's at
8 significant cost to the debtors and to this Court.

9 For those reasons, we respectfully request that the
10 motion be denied.

11 THE COURT: The motion is denied and the reasons, I
12 think, are clear from the colloquy on the record. Mr. Kramer
13 may be within a class of claimants that currently is contesting
14 reclassification of compensation claims based upon so-called
15 restricted stock units. The outcome of that litigation is at
16 the moment completely unclear. But it's too late for Mr.
17 Kramer to join that party. It has -- as members of its
18 class -- individuals each of whom opposed reclassification.
19 Many of those individuals did so by simply writing letters
20 saying, I oppose reclassification. All it took to get a ticket
21 of admission to that particular ongoing litigation was
22 something that one could classify as a real objection. By
23 electing not to object, Mr. Kramer has waived the right to get
24 back in.

25 And I find that there has been a failure to satisfy

1 the standards under 60(b), not only because of the knowing
2 decision not to object, but because of the significant
3 prejudice that would arise by reason of allowing parties who
4 have knowingly chosen not to oppose reclassification or
5 disallowance to get back in. Finality is important in
6 bankruptcy. The motion is denied.

7 MS. ECKOLS: Your Honor, moving to agenda item number
8 5, that is the motion of Caisse Des Depots Et Consignations to
9 permit a late-filed claim against Lehman Brothers Special
10 Finance. I am not sure if their counsel is here --

11 MR. HELLMAN: Yes.

12 MS. ECKOLS: You'll forgive me for butchering your
13 client's name.

14 MR. HELLMAN: That's okay. I do the same.

15 Good morning, Your Honor, Jay Hellman,
16 SilvermanAcampora. For ease of reference perhaps we can just
17 call the client CDC.

18 Your Honor, with me is my colleague, Brett Silverman,
19 and before the Court is CDC's motion for the allowance of a
20 late-filed claim in a sum of not less than 3,077,434 dollars.

21 Judge, there are a couple of issues that are not in
22 dispute with respect to the motion. The first is that there is
23 an ISDA master agreement between the parties and LBHI is a
24 guarantor on that agreement.

25 The question really is in this case what constitutes

1 sufficient notice of a bar date to a known creditor. And I say
2 known creditor because CDC is listed on schedule G of the
3 petition as having an unexpired executory contract.

4 THE COURT: Mr. Hellman, I've read the papers and I'm
5 familiar with the issues, and I'd like you to deal with
6 response of the debtor that points out that your client
7 received actual notice at two addresses.

8 MR. HELLMAN: Sure.

9 THE COURT: You're dealing with a notice provision in
10 an ISDA agreement in treating that as if it governs the
11 obligations of the debtor to provide actual notice of the bar
12 date. Well, I have a problem with that position and you need
13 to know that now.

14 MR. HELLMAN: Okay. I understand, Judge. The issue
15 though is that any notices with respect to the agreement have
16 to be sent to a specific particular address in France.

17 THE COURT: So what?

18 MR. HELLMAN: The reason is --

19 THE COURT: So what? I mean, I'm frankly astounded; I
20 read your papers and it's as if inefficiency in France should
21 be elevated to a procedural due process right.

22 MR. HELLMAN: Well, it's inefficiency on the debtors'
23 side as well, Judge. There's a contract that governs the
24 relationship of the parties that specifically says notice needs
25 to be sent to a very particular address. If that notice is not

1 sent to that very particular address, the chances are --
2 because it's a quasi-governmental agency in France that spans
3 many, many blocks -- they're not going to get that notice. And
4 the cases that we cite in the reply specifically address issues
5 where there is for example a national union and indemnity
6 agreement that says notice has to be sent to a very particular
7 address. And there's very good reasons for that and that's
8 what we're expressing in the papers. Notice to the --

9 THE COURT: I understand that, but there is a
10 fundamental problem with your position where notice appears to
11 have been actually given at two other addresses, one in New
12 York and one in Paris. And where the notice address in Paris,
13 but for the back office reference, has led to the rejection of
14 the receipt of mail that, if opened, could have ended up in the
15 right place. I don't understand how you can take the position
16 you're taking with a straight face.

17 MR. HELLMAN: With respect to the -- because the case
18 law tells us that when there's a specific notice provision in a
19 contract, we're entitled to notice at that particular address.
20 And, yes, the reason why we had that provision in the agreement
21 is for exactly this reason, because we would not get the
22 notice. It would wind up getting rejected and we'd wind up in
23 this very position, unfortunately.

24 THE COURT: What took so long to get here?

25 MR. HELLMAN: There --

1 THE COURT: This is now 2012.

2 MR. HELLMAN: Sure. They're primarily -- first of
3 all, it's, as I said, Judge, it's a quasi-governmental agency.
4 The wheels don't move very quickly, but when they do, we're
5 talking about primarily French-speaking employees. With --

6 THE COURT: But they have an office on 57th Street.
7 Wouldn't that -- don't they?

8 MR. HELLMAN: But they don't. That office had no
9 dealings with respect to this contract. But be that as it may,
10 that office was -- the client that exists now, CDC, separated
11 from that office in New York in 2007, so it ceased to exist as
12 a CDC proper, if you will, here today, entity.

13 MR. HELLMAN: But notice to the New York address under
14 the contract is not sufficient. Notice to some alternate
15 address in France is not sufficient, specifically because we
16 have this contract that says, if you going to notify us about
17 anything dealing with the ISDA agreement including presumably
18 the notice of the bar date because that's the basis of our
19 claim, then notice has to be sent to a specific address to make
20 sure that we get it. Otherwise, we're in this very position.

21 THE COURT: Now are you saying -- and this is actually
22 a fairly interesting question -- that parties can contract
23 around the notice provisions of the bankruptcy rules and that
24 parties can by separate contract impose notice obligations that
25 wouldn't otherwise exist as a matter of law on debtors?

1 MR. HELLMAN: It appears to be that way, Judge. If
2 you look at the reply that we submitted, there are cases in
3 support of that proposition that the parties had a contract.
4 So even though there are notice provisions under the Bankruptcy
5 Code that may provide for certain due process rights, if the
6 parties have a specific agreement, a specific contract, that
7 says notice has to be sent to that address -- that very
8 specific address -- that's a requirement. We have to have
9 actual notice to a known creditor in that situation.

10 THE COURT: But you actually did receive three copies
11 of the bar date notice. One that was rejected by the mail
12 office, or mailroom of that location, and two that
13 presumptively were received, plus there was publication notice,
14 plus your client terminated the contract promptly after the
15 commencement of the Chapter 11 case, and then completely
16 ignored the fact that there was a bankruptcy that was
17 publicized all over the world including France?

18 MR. HELLMAN: Let's take that in a couple of pieces.
19 The first part is, yes, there were notices that were sent to
20 other addresses that presumably were not returned. But we're
21 talking about again a quasi-governmental agency in France that
22 has 73,000 employees and receives thousands of pieces of mail
23 per day. Hence the requirement in the contract that there's a
24 very, very specific address that has to be complied with and
25 that's where notice has to be sent, and that unfortunately is

1 the one that was returned.

2 With respect to the publication, the case law that we
3 cite in the papers in both the motion and the reply say, if
4 there's a known creditor and you know that address, publication
5 is insufficient. And with respect to -- really, the bottom
6 line is even though due process may have been satisfied, the
7 point is, is that the contract had a very specific notice
8 provision that they have to comply with and if they don't, then
9 case law provides that we have the ability to file a late
10 claim.

11 I understand from counsel that their position -- even
12 if we get past this sort of tricky issue -- we still have the
13 four-factor Pioneer tests to take a look at that would allow
14 the late-filed claim. And I understand counsel's position
15 would mostly be, as we saw from the last go-around, the
16 prejudice to the debtor and to the Court for everybody else who
17 may have to come here and want to file a late claim. I know
18 the Court had a couple of decisions that were rendered in May
19 of 2010, I think it was. But our situation again is different
20 because we have a very specific contractual obligation on the
21 part of the debtor to provide us with notice.

22 And irrespective of the early termination, that really
23 dealt with -- if we look at the contract carefully -- it really
24 deals with the termination of the transactions and not
25 necessarily the contract. The contract provisions are still

1 operative. It's just there's no transactions any longer
2 because of the bankruptcy filing.

3 THE COURT: Who within your client made the decision
4 to terminate the ISDA agreement?

5 MR. HELLMAN: I'm sorry, Judge. Could you repeat?

6 THE COURT: Who within your client made the decision
7 to terminate?

8 MR. HELLMAN: That I couldn't answer. It's a
9 bureaucracy. It could have been anybody from -- I'm sure it
10 was somebody from a position of authority but I couldn't say
11 who.

12 THE COURT: Okay. So, in effect, you argue that
13 because you represent an organization that appears to be
14 inefficiently managed that it should get some kind of special
15 break in this bankruptcy. Am I misunderstanding your argument?

16 MR. HELLMAN: Yeah, I don't know that that's
17 necessarily the argument, Judge. I think that the point is
18 and, yes, it's not effectively managed because of -- well, I
19 can't say it's not effectively managed. What I can say is,
20 again, it's a quasi-governmental agency with thousands of
21 employees. And the point that we're making is not that it's
22 not managed properly. The point we're making is because of the
23 enormity of this agency, the contract had very, very specific
24 mailing requirements for notice. And if those are not complied
25 with, the mail's going to be rejected and come back and it's

1 going to put us in this very position.

2 THE COURT: Do you know what procedures exist within
3 your client to deal with errant mail, because given the vast
4 number of addresses in Paris and the significant volume of mail
5 that comes, the problem that we're now identifying quite late
6 must happen literally every day.

7 MR. HELLMAN: I can't -- I have no idea of how they
8 handle errant mail. Presumably, as in this case, it's returned
9 as undeliverable. Hence -- and they have every contract or
10 every dealing they have, has specific notice requirements to
11 make sure that it gets to the very right -- the correct
12 address.

13 THE COURT: With respect to your argument, this seems
14 to me to be undue reliance upon strict compliance by parties
15 you have no control over with respect to a notice provision
16 that may or may not be observed.

17 MR. HELLMAN: If I can make one other point, Judge,
18 and my colleague reminds me: The debtor -- it's not that the
19 debtor didn't know of the notice requirements of the address.
20 Our reply contains other correspondence that was sent by the
21 debtor to that very specific address after the bar date notices
22 were sent. So the debtor is well aware that they have to send
23 information to this particular address in order for us to
24 receive it.

25 THE COURT: Presumably, information is sent to that

1 particular address so that somebody who knows something about
2 this transaction can take action with respect to it?

3 MR. HELLMAN: Correct.

4 THE COURT: Do you know who that person is?

5 MR. HELLMAN: I do not.

6 THE COURT: Okay. Thank you.

7 MR. HELLMAN: Thank you, Your Honor.

8 MS. ECKOLS: Your Honor, the debtors' position as to
9 CDC's motion is set forth at length in its response at docket
10 number 19314. I'm not going to address -- repeat all those
11 arguments, but I want to address a few specific points.

12 CDC's due process and excusable neglect arguments boil
13 down to the same question: Can a sophisticated organization
14 that engaged in complex derivatives transactions with the
15 debtors assert that it did not receive actual notice of the bar
16 date when notice was admittedly delivered to three different
17 addresses. The answer has to be "no". The only alleged defect
18 that CDC claims with debtors' service of the bar date notice is
19 that the address that was listed in the debtors' schedules --
20 the address that one of the three notices to CDC was sent to --
21 did not include an attention to the specific department that
22 was provided in the master agreement between the parties. It's
23 not an issue of whether the street address was incorrect. The
24 street address was correct, as CDC acknowledges.

25 CDC's entire argument is based on the premise that

1 because it is a large organization with many departments and
2 offices, that it need not conduct any due diligence whatsoever
3 regarding the mail it receives if the sender does not direct it
4 to a specific department within CDC. The bottom line is that
5 CDC's alleged lack of notice is the result of CDC's internal
6 mail-handling guidelines and its decision not to open the
7 envelope that contained the bar date notice.

8 As set forth in the affidavit accompanying the
9 debtors' response, the debtor served CDC with the bar date
10 notice at three different addresses, two in Paris and one in
11 New York. Two of those bar date notices were sent to the
12 addresses that were specified in a derivatives contract between
13 CDC and LBSF, one in Paris and one in New York.

14 The address on the bar date notice that was sent to
15 Paris was correct, but it didn't include the attention line
16 that specified that it should be routed within CDC to the Back
17 Office Monetaire.

18 The envelope did, however, contain the following
19 legend: "Legal documentation enclosed. Please direct to
20 attention of addressee, president or legal department." When
21 CDC received this envelope, it did not route it to its legal
22 department or even open it to try to determine what department
23 it should go to. Instead, CDC stamped it "Return to Sender"
24 without even looking at it. This was a decision that was
25 entirely within CDC's control. Having refused to open its

1 mail, CDC cannot now claim that its refusal to accept the
2 actual notice that the debtors' mailed to the correct street
3 address, deprives it of due process or gives rise to an
4 excusable neglect defense.

5 As to CDC's due process argument, CDC's argument
6 conflates notice that complies with due process with notice
7 that strictly complies with the ISDA. Due process does not
8 require compliance with those contract provisions. There are
9 two different standards. Due process as set forth in Mullane
10 and its progeny requires that notice be reasonably calculated
11 to apprise parties of the pendency of the action. To satisfy
12 due process, notice does not need to be provided in the way
13 that a creditor prefers or in a way that is specified in a
14 contract. Taking the movant's argument to its logical
15 conclusion, the debtors could have served a bar date notice on
16 every single office of CDC, but CDC would not be deemed to have
17 received actual notice unless at least one of those notices was
18 addressed to the department listed in the master agreement.
19 Serving CDC with the bar date notice at three separate
20 addresses -- street addresses that CDC does not dispute were
21 correct -- was reasonably calculated to provide CDC with notice
22 and fully complies with the due process.

23 Your Honor, the Drexel decision discussed in the
24 debtors' response is on point. I don't want to repeat that
25 discussion except to note that the court in Drexel determined

1 that Barclays received actual notice even though no notice was
2 served on its London office, which was allegedly the proper
3 office for handling the notice. In that case, the court
4 determined that notice that was served on Barclays' offices in
5 Connecticut, New York, and Australia, was sufficient and that
6 it was the responsibility of Barclays' employees to route the
7 notice to the proper department within the Barclays
8 organization. Here CDC is not even arguing that the bar date
9 was not sent to the proper office. Rather, CDC admits that
10 notice was delivered to the proper street address, but it
11 claims that it had no obligation to open the envelope and
12 determine which department should handle it or apparently to
13 forward it to its legal department as directed on the envelope.
14 This argument fails under Drexel and is contrary to Mullane.

15 And, briefly, the case that CDC relies on -- the
16 National Union case -- specifically actually provided that the
17 notice provided by the debtors, despite having not complied
18 with the contractual provisions, did in fact comply with due
19 process.

20 Moving to excusable neglect, it's based on the same
21 facts as CDC's due process argument and falls far short of
22 Pioneer's excusable neglect standard. As Your Honor is aware,
23 the most important Pioneer factor in the Second Circuit is
24 whether the reason for the delay and the extent to which it was
25 within the reasonable control of the movant. Here, CDC argues

1 that the reason for its delay in its filing was entirely the
2 fault of the debtors in not directing the notice to a special
3 department or specific department within CDC. However, it was
4 CDC's decision to not open the envelope containing the bar date
5 notice, and it was CDC's decision not to direct the notice to
6 the legal department as was directed on the envelope. It was
7 CDC's decision to simply stamp the envelope "Return to Sender"
8 without conducting any diligence.

9 CDC is a sophisticated party that entered into complex
10 derivative transactions with LBSF. It should be sophisticated
11 enough to open its mail and direct it within its organization.
12 And CDC's decision whether or not to do so is within its
13 reasonable control under Pioneer.

14 Lastly, as to prejudice, CDC makes the same argument
15 that other claimants have brought before this Court in its
16 claiming excusable neglect. Specifically, that it's only one
17 claim, that this is a massive bankruptcy, and that in the grand
18 scheme of things this claim will have a negligible impact on
19 the debtors but a major one on CDC. As Your Honor has noted
20 when dealing with other claimants seeking leniency on the bar
21 date, the prejudice to the debtors cannot be traced to the
22 filing of any one single claim but to the impact of permitting
23 exceptions that risk opening the floodgates.

24 Having failed to carry its burden on excusable neglect
25 and because CDC received notice that complied with due process,

1 the motion should be denied.

2 THE COURT: I agree. The motion should be denied and
3 that's based upon the present record. I'm going to deny the
4 motion, however, without prejudice to further presentations
5 that may be made by CDC concerning its internal processes.

6 One of the aspects about this that troubles me is that
7 there is a general statement that CDC needed notice at a
8 particular address in order to function. I have a hard time
9 accepting that. I have absolutely no showing that has been
10 made by the movant concerning what CDC is really all about in
11 terms of the way it processes mail, who deals with it, who is
12 responsible for this contract, what that individual did or
13 didn't do in connection with monitoring the contract after
14 termination, what if anything was done by that individual to
15 pay attention to the bankruptcy, to consult with bankruptcy
16 counsel or even think about it after terminating the contract.
17 This appears to be a situation of complete and absolute neglect
18 and inexcusable inefficiency.

19 For that reason, based upon the showing, there's
20 absolutely no basis to grant the motion. That doesn't mean
21 that it may not be possible at some time -- with great
22 embarrassment, presumably, to the people involved -- to
23 demonstrate why it is that years went by and they did nothing
24 about a claim they now think is significant.

25 The motion is denied without prejudice to being re-

1 urged if as in when it may be possible to demonstrate good
2 cause. I see no basis for good cause on the present record.

3 MS. ECKOLS: Thank you, Your Honor, and I believe that
4 concludes today's contested claims agenda.

5 THE COURT: Okay. We're going to clear the courtroom
6 except for those who are going to stay for the chambers
7 conference. We could go into chambers but I think there are
8 probably too many people involved.

9 So we'll take a five-minute break and then everybody
10 who's involved in the chambers conference can come forward.
11 I'll return in five minutes.

12 MS. ECKOLS: Thank you, Your Honor.

13 (Whereupon these proceedings were concluded at 11:16 AM)

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I N D E X

E X H I B I T S

DEBTORS	DESCRIPTION	PAGE
No number	Steven Cohn's	32
	declaration	

RULINGS

	Page	Line
Debtors' motion to estimate the reserve	28	9
at five billion granted		
Debtors' motion for authority to use non-cash	48	10
assets in lieu of available cash granted		
Ms. Pugia's objection overruled and omnibus	50	25
objection to Ms. Pugia's claim granted		
Motion of Jeremy R. Kramer denied	60	11
Caisse Des Depots Et Consignations' motion	74	3
denied without prejudice to any further		
presentations concerning internal processes		

C E R T I F I C A T I O N

I, Sara Davis, certify that the foregoing transcript is a true
and accurate record of the proceedings.

SARA DAVIS

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Date: February 23, 2012